

Extension Request
Memorandum of Understanding
New Jersey Department of Environmental Protection
U.S. Environmental Protection Agency - Region 2
Memorandum of Understanding for Implementation of
Various Rules

On June 20, 1994, December 5, 1994, June 29, 1995, and March 5, 1997, the U.S. Environmental Protection Agency (EPA) published final regulations pertaining to technical corrections for the Lead and Copper Rule, and certain Analytical Methods for chemical and radiological contaminants. These rules updated certain analytical methods, withdrew others and made certain changes to the final Lead and Copper Rule.

On April 28, 1998, the EPA published the final Primacy Revisions for Administrative Penalty Authority, Emergency Plan and PWSS Definition Change (Primacy). This rule codifies certain changes, as modified by Section 1413 of the Safe Drinking Water Act (SDWA) Amendments, in order for States to obtain and/or retain primacy.

On June 11, 1998, EPA published a final rule removing the prohibition on the use of Point of Use (POU) devices for compliance with National Primary Drinking Water Regulations under certain circumstances. Previously, in a July 8, 1987 Federal Register, EPA had promulgated a requirement in 40 CFR 141.101 that public water systems shall not use POU devices to achieve compliance with an MCL. The SDWA Amendments of 1996 authorized the use of these devices under certain circumstances, this FR Notice makes the regulatory provisions consistent with the statutory language.

On August 14, 1998, EPA published the Variances and Exemptions Rule which revised the existing language regarding variances and exemptions and includes procedures and conditions under which a primacy State may issue small system variances to systems serving less than 10,000 persons. Since New Jersey has existing V & E procedures, its current regulations may need to be updated to reflect the new regulatory language.

On August 19, 1998, the EPA published the final Consumer Confidence Report Rule (CCR). This rule amends the National Primary Drinking Water Regulations, 40 CFR Part 141 and the regulations for implementation of the National Primary Drinking Water Regulations, 40 CFR Part 142. Technical Corrections to this Rule were published separately on December 16 1998, June 29, 1999, September 14, 1999 and May 4, 2000.

On December 16, 1998, the EPA published the final Interim Enhanced Surface Water Treatment Rule (IESWTR) and the Stage 1 Disinfectants/Disinfection Byproducts Rule (Stage 1 DBPR). These rules amend the National Primary Drinking Water Regulations, 40 CFR Part 141 and the regulations for implementation of the National Primary Drinking Water Regulations, 40 CFR Part 142.

On January 8, 1999, the EPA suspended small system compliance with the existing Unregulated Contaminant Monitoring Rule (UCMR). On September 17, 1999, EPA published the final Revisions to the UCMR which replaces the existing UCMR requirements, effective January 1, 2001. The revised UCMR are not required to be adopted by States (EPA retains primacy). Therefore, States must delete their existing UCMR rules to avoid overlapping requirements.

The April 28, 1998 revisions to the Primacy Rule extended the time allowed for States to adopt new Federal regulations from 18 months to 2 years. Therefore, the State must adopt regulations pertaining to the above rules and submit a complete and final primacy revision application 2 years from the publication date of each promulgated rule, unless it requests an extension of up to 2 years to adopt new or revised regulations.

This document records the terms of a Primacy Memorandum of Understanding (MOU) between the New Jersey Department of Environmental Protection and the EPA, Region 2 for the above listed rules, and shall remain effective from the date this MOU is signed until either September 30, 2001, or the date the State's primacy application is submitted under 40 CFR 142.12, whichever is earlier.

Under this MOU, the State and EPA will share responsibility for implementing the primary program elements as indicated below.

Activities to be carried out by the State:

- Notify PWSs of applicable rules and requirements of the rules;
- Provide training for State staff and PWSs on the requirements of applicable rules;
- Incorporate the compliance monitoring and reporting requirements for all applicable rules into the regular compliance determination process;
- Issue notices to systems that fail to meet the requirements of applicable rules;
- Track compliance by systems with the rules and take timely and appropriate actions for any violations
- Report violation and enforcement information to Region 2 via current system and via SDWIS State once developed and implemented.

Activities to be carried out by EPA Region 2:

- Provide training to State staff and, when possible, to water system operators;
- Coordinate with water associations to increase awareness of requirements;
- Assist with public outreach efforts to inform and educate PWSs;

- Keep the State informed of SDWIS reporting requirements during development and implementation;
- Compliance assistance, as requested;
- Take enforcement actions against PWSs that violate any applicable requirements, if no State enforcement action has been taken 30 days after notification by EPA of its intentions to take enforcement actions.

Schedule of Milestones for Extension Request for the rules listed above

<u>Deliverable</u>	<u>Date</u>
Submit Draft Primacy Application (except V &E)	06/30/01
Submit Final Primacy Application (including AG Certification)	09/30/01
Submit Draft Primacy Application (V & E)	05/30/02
Submit Final Variance and Exemption Primacy Application (including AG Certification)	08/14/02

 Raymond E. Cantor
 Assistant Commissioner, Land Use Management
 N.J. Department of Environmental Protection

 Date

for Matthew Callahan
 William J. Muszynski
 Acting Regional Administrator
 U.S. Environmental Protection Agency
 Region 2

3/28/01
 Date

FACT SHEET

Background:

- Per Safe Drinking Water Act Amendments of 1996, States have 2 years to submit primacy revision application to EPA
- SDWA also allows States to get a 2-yr extension, for combining two or more rules
- NJDEP wants to combine (i.e., bundle) these rules and submit two primacy revision applications

Subject:

Primacy Application Extension Request for Submittal of the following Rules:

Analytical Methods Technical Corrections (Three separate Technical Corrections and a Radionuclides Analytical Methods FR previously promulgated) (06/20/94, 12/05/94, 06/29/95, 03/05/97)

Primacy Revisions for Administrative Penalty, Emergency Plan and PWS Definition (04/28/98) Variance and Exemption (08/14/98)

Consumer Confidence Report (CCR) (08/19/98)

Interim Enhanced Surface Water Treatment Rule (IESWTR) (12/16/98)

Stage 1 Disinfectant/Disinfection Byproducts Rule (Stage 1 DBPR) (12/16/98)

Suspension of Unregulated Contaminant Monitoring (UCM) for Small Systems (01/08/99)

Purpose:

- The State of New Jersey is requesting revisions for the above rules.

- This letter will approve their request.

Two MOUs
under this Fact
Sheet for DRA
signature.

Submittal of primacy program

- A MOU is also attached which will outline the responsibilities of the New Jersey Department of Environmental Protection and EPA during the interim period prior to primacy approval

**State of New Jersey
Department of Environmental Protection
Division of Water Supply**

Primacy Revision Application

For

Arsenic and Contaminant Monitoring, Clarifications and New Source Requirements

Interim Enhanced Surface Water Treatment Rule/Stage I Disinfection By-Product Rule, State Primacy Requirements to Implement SDWA Amendments, Revisions

Methods Update Final Rule

Minor Revisions to Public Notification Rule, Consumer Confidence Report Rule and Primacy Rule

**Approval of Additional Method for the Detection of Coliforms and
E. coli in Drinking Water**

**Corrections and Clarification to Drinking Water Regulations; National Primary
Drinking Water Regulations for Lead and Copper**

Analytical Method for Uranium

May 2009
Revised August 2009

Jon S. Corzine
Governor

Mark N. Mauriello
Acting Commissioner

TABLE OF CONTENTS

STATE PRIMACY REVISION APPLICATION	1
SUMMARY OF FEDERAL RULES IN NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION'S (NJDEP) APPLICATION PACKAGE	2
Section I. State Primacy Revision Checklist.....	5
Section II. Text of State's Regulation	6
Section III. Primacy Revision Crosswalk	6
Section IV. State Record Keeping and Reporting Checklist	7
Section V. Special Primacy Requirements (40 CFR 142.16) for the Arsenic Rule	7
Section VI. Attorney General's Statement of Enforceability	11

APPENDIX A: Arsenic Reporting Form

APPENDIX B: Subchapter 5: State Primary Drinking Water Regulations, New Jersey Safe Drinking Water Act, N.J.A.C. 7:10

STATE PRIMACY REVISION APPLICATION

Pursuant to 40 CFR 142.12, Revision of State Programs, complete and final requests for approval of program revisions to adopt new or revised Environmental Protection Agency (EPA) regulations must be submitted to the EPA no later than 2 years after promulgation of the new or revised federal regulation, unless an extension request (for up to two additional years) has been granted. The following new or revised National Primary Drinking Water Regulations (NPDWR) have been promulgated and are part of this primacy application package:

- Arsenic and Contaminant Monitoring, Clarifications and New Source Requirements January 22, 2001 (40 CFR parts 9.1, 141.2, 141.6, 141.11, 141.23, 141.24, 141.60, 141.62, 141.154, 142.16 and 142.62)
- Interim Enhanced Surface Water Treatment Rule (IESWTR)/Stage I Disinfection By-Product Rule (DBPR), State Primacy Requirements to Implement SDWA Amendments, Revisions February 12, 2001 (40 CFR parts 9.1, 141.12, 141.30, 141.64, 141.65, 141.71, 141.73, 141.130, 141.131, 141.132, 141.133, 141.134, 141.135, 141.170, 141.172, 141.173, 141.175, 142.12, and 142.15)
- Methods Update Final Rule October 23, 2002 (40 CFR parts 136.3, 141.21, 141.23, 141.24, 141.25, 141.74, and 143.4)
- NPDWR: Minor Revisions to Public Notification Rule, Consumer Confidence Report Rule and Primacy Rule November 27, 2002 (40 CFR parts 141 Subpart O and Q and 142.3)
- National Primary and Secondary Drinking Water Regulations: Approval of Additional Method for the Detection of Coliforms and *E. coli* in Drinking Water February 13, 2004 (40 CFR part 141.21)
- NPDWR: Corrections and Clarification to Drinking Water Regulations; NPDWR for Lead and Copper June 29, 2004 (40 CFR parts 141.25, 141.26, 141.62, 141.71, 141.72, 141.73, 141.74, 141.75, 141.85, 141.132, 141.133, 141.70, 141.502, 141.530, 141.531, 141.534, 141.551, 141.563, 141.570, 142.14, 142.16 and 142.62)
- Analytical Method for Uranium August 25, 2004 (40 CFR part 141.25)

Primacy

40 CFR Part 142 sets out requirements for States to obtain and/or retain primary enforcement responsibility (primacy) for the Public Water System Supervision (PWSS) program as authorized by Section 1413 of the Safe Drinking Water Act (SDWA). The 1996 SDWA Amendments created a number of requirements that modified the process for States to obtain and/or retain primacy and the changes became effective on April 28, 1998 (63 FR 23361-69 (April 28, 1998)).

There is also a process identified in the SDWA Amendments of 1996 which allows for interim primacy authority for States while their applications to modify their primacy programs are under review. If a State has primacy for every existing NPDWR in effect when the new regulation is promulgated, the State will have interim primacy for a new or revised regulation during the period in which EPA is making a determination with regard to primacy for that new or revised regulation.

SUMMARY OF FEDERAL RULES IN NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION'S (NJDEP) APPLICATION PACKAGE

Arsenic and Contaminant Monitoring, Clarifications and New Source Requirements - promulgated January 22, 2001 (40 CFR parts 9.1, 141.2, 141.6, 141.11, 141.23, 141.24, 141.60, 141.62, 141.154, 142.16 and 142.62)

The Federal rule establishes a new Federal Maximum Contaminant Level (MCL) of 10 µg/l for arsenic. Prior to the adoption of the Arsenic Rule, the MCL for arsenic was 50 µg/l. The rule applies to all community water systems and nontransient noncommunity water systems. The effective date for the new Federal MCL is January 23, 2006. The State regulations at N.J.A.C. 7:10-5 specify monitoring schedules for arsenic. All surface water systems must complete monitoring according to the Arsenic Rule by December 31, 2006 and all ground water systems must complete monitoring by December 31, 2007.

In addition, the Arsenic Rule clarifies monitoring and compliance requirements for new systems or sources of drinking water and State-determined monitoring after exceedances for inorganic, volatile organic and synthetic organic contaminants.

The rule also permits EPA to recognize State specified time periods and sampling frequencies for new public water systems and systems using a new source of water to demonstrate compliance with drinking water regulations regarding inorganic, volatile organic, and synthetic organic requirements. This Arsenic and Contaminant Monitoring, Clarifications and New Source Requirements Rule became effective March 23, 2001.

Interim Enhanced Surface Water Treatment Rule/Stage I DBPR, State Primacy Requirements to Implement Safe Drinking Water Act Amendments Revisions - promulgated February 12, 2001 (40 CFR parts 9.1, 141.12, 141.30, 141.64, 141.65, 141.71, 141.73, 141.130, 141.131, 141.132, 141.133, 141.134, 141.135, 141.170, 141.172, 141.173, 141.175, 142.12, and 142.15)

This regulation makes editorial revisions to the previously published (December 16, 1998) IESWTR and the Stage 1 DBPR rule. Revisions were made so that the compliance dates for the IESWTR and the Stage 1 DBPR coincide with calendar quarters. In addition, the use of new analytical methods for compliance monitoring for total trihalomethanes was incorporated. Editorial revisions also incorporated in this rule include word replacement, spelling corrections, and removal of repetitions. This rule became effective February 12, 2001.

Methods Update -promulgated October 23, 2002 (40 CFR parts 136.3, 141.21, 141.23, 141.24, 141.25, 141.74, and 143.4)

This Methods Update rule revises wastewater and drinking water regulations to include updated versions of test procedures for the determination of chemical, radiological, and microbiological pollutants and contaminants in wastewater and drinking water. The rule allows previously approved versions of the methods to remain. Public water systems required to analyze water

samples must use one of the approved standardized test procedures. The rule became effective November 22, 2002.

National Primary Drinking Water Regulations: Minor Revisions to Public Notification Rule, Consumer Confidence Report Rule and Primacy Rule - promulgated November 27, 2002 (40 CFR parts 141 Subpart O and Q and 142.3)

The rule finalizes revisions to health effects language for di(2-ethylhexyl)adipate (DEHA) and di(2-ethylhexyl)phthalate (DEHP) in the Public Notification (PN) Rule and the Consumer Confidence Report (CCR) Rule. Minor revisions were also made correcting Appendix A of the CCR Rule (40 CFR Subpart O). These revisions include correcting drinking water source information listed for copper, changing the placement of regulatory and health effects information for disinfection by-products, and correcting the reference "chloride dioxide" to "chlorine dioxide."

The rule also revises the Primacy Rule to remove regulations pertaining to the Administrator's authority to waive NPDWR for Federally owned or operated public water systems. This authority was removed by Congress in the 1996 amendments to the Safe Drinking Water Act. The rule became effective December 27, 2002.

National Primary and Secondary Drinking Water Regulations: Approval of Additional Method for the Detection of Coliforms and *E. coli* in Drinking Water- promulgated February 13, 2004 (40 CFR part 141.21)

This rule approves the ColitagTM method to support previously established requirements for NPDWR compliance monitoring for total coliforms and *E. coli* in finished drinking water. As a result of this rule, water utilities and certified laboratories will have an additional analytical method option to test for total coliforms and *E. coli*. This rule became effective March 15, 2004.

National Primary Drinking Water Regulations: Corrections and Clarification to Drinking Water Regulations; National Primary Drinking Water Regulations for Lead and Copper - promulgated June 29, 2004 (40 CFR parts 141.25, 141.26, 141.62, 141.71, 141.72, 141.73, 141.74, 141.75, 141.85, 141.132, 141.133, 141.70, 141.502, 141.530, 141.531, 141.534, 141.551, 141.563, 141.570, 142.14, 142.16 and 142.62)

This rule makes minor revisions to clarify and correct EPA's Drinking Water regulations. Clarifications include typographical errors, inadvertent omissions, editorial errors, and outdated language in the final Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR), the Surface Water Treatment Rule, and other rules. In addition to these clarifications, the rule adds optional monitoring for disinfection profiling and an earlier compliance date for some requirements in the LT1ESWTR, and a detection limit for the Uranium Methods.

Thirdly, the rule reinstates text that was inadvertently dropped from the Lead and Copper Rule which lists the facilities that must receive public education brochures by a public water system

following an action level exceedance for lead or copper.

This rule became effective on July 29, 2004, except for the amendment to 40 CFR 141.85(c)(2)(iii), which became effective June 29, 2004.

Analytical Method for Uranium - promulgated August 25, 2004 (40 CFR part 141.25)

The NPDWR: Analytical Method for Uranium Rule establishes three additional analytical methods for compliance determinations of uranium in drinking water. These methods use an inductively coupled plasma mass spectrometry (ICP-MS) technology that has gained wide acceptance in the analytical community. This rule does not withdraw approval of any previously approved monitoring methods for uranium. The rule applies to all community water systems. This rule became effective August 25, 2004.

Section I. State Primacy Revision Checklist

State Primacy Revision Checklist		
Required Program Elements	Revision to State Program ¹	EPA Findings/Comments
§142.2 and 142.10 Primary Enforcement - Definition of PWS	Yes	
§142.10(a) Regulations No Less Stringent	Yes	
§142.10(b)(1) Maintain Inventory	Yes	
§142.10(b)(2) Sanitary Survey Program	Yes	
§142.10(b)(3) Laboratory Certification Program	Yes	
§142.10(b)(4) Laboratory Capability	Yes	
§142.10(b)(5) Plan Review Program	Yes	
§142.10(b)(6)(i) Authority to Apply Regulations	Yes	
§142.10(b)(6)(ii) Authority to Sue in Courts of Competent Jurisdiction	No	
§142.10(b)(6)(iii) Right of Entry	Yes	
§142.10(b)(6)(iv) Authority to Require Records	Yes	
§142.10(b)(6)(v) Authority to Require Public Notification	Yes	
§142.10(b)(6)(vi) Authority to Assess Civil and Criminal Penalties	Yes	
§142.10(b)(6)(vii) Authority to Require CWSs to Provide CCRs	Yes	
§142.10(c) Maintenance of Records	Yes	
§142.10(d) Variance/Exemption Conditions	Yes	
§142.10(e) Emergency Plans	Yes	
§142.10(f) Administrative Penalty Authority	Yes	
§142.16(j) Special Primacy Requirements, waiver criteria, monitoring plan	Yes	
§142.16(k) Special Primacy Requirements, New Systems, New Sources, Monitoring Requirements	Yes	

¹ Revision to State Program is answered as "yes" based upon the changes to state regulations adopted in November 2004. See Section II.

Section II. Text of State's Regulation

A copy of Subchapter 5: State Primary Drinking Water Regulations of the New Jersey Safe Drinking Water Act Regulations (N.J.A.C. 7:10), published in the New Jersey Register on December 6, 2004, is enclosed. The NJDEP adopts and incorporates by reference all NPDWR, 40 CFR 141, as amended and supplemented, including all siting requirements, filtration and disinfection requirements, maximum contaminant levels, monitoring and analytical requirements, reporting requirements, public notification requirements, and recordkeeping requirements as the New Jersey primary drinking water regulations, applicable to all public water systems. In addition, the NJDEP adopted by reference the NPDWR Implementation, 40 CFR 142 Subparts E, F, G and K, for variance and exemption requirements. Therefore, the NJDEP's drinking water program is based on the Federal standards. New Jersey has adopted more stringent standards for a few drinking water contaminants, including arsenic, which are identified in Subchapter 5.

In regards to arsenic, discretionary changes to the Federal Regulations are provided in the New Jersey Safe Drinking Water Act Regulations, N.J.A.C. 7:10-5.2. N.J.A.C. 7:10-5.2 (a)3 states "MCLs and monitoring requirements for inorganic chemicals (IOCs) shall be those established under the Federal Regulations and at (a)7 below, except for the State regulated contaminant arsenic, for which an MCL of 5 µg/l shall apply."

All other rule changes included in this primacy package are adopted by reference as the New Jersey Safe Drinking Water Act Regulations (N.J.A.C. 7:10-5.1).

Section III. Primacy Revision Crosswalk

New Jersey Safe Drinking Water Act Regulations, N.J.A.C. 7:10-5.1, *Applicability of National Regulations*, adopts all the NPDWR by reference as the New Jersey Primary Drinking Water Regulations. Therefore, all of the rules and revisions included in this primacy application have been adopted by New Jersey by reference.

At N.J.A.C. 7:10-5.2, *Discretionary Changes to National Regulations*, New Jersey adopted rule changes which are more stringent than the Federal rules.

Discretionary Changes – Arsenic Rule

The new Federal MCL for arsenic is 10 µg/l, effective January 23, 2006. New Jersey adopted a more stringent (lower) MCL of 5 µg/l for arsenic, which was adopted on November 4, 2004 with an effective date of January 23, 2006.

In January 2002, New Jersey proposed an MCL of 10µg/l for arsenic in drinking water and conducted two public hearings on the proposal. During this time, technical information on analytical methodologies and method detection limits was brought to the State's attention. The State also received requests from the public for a more stringent MCL to protect the public's health. Therefore, the State decided to reevaluate the information used as a basis for the 10µg/l

proposal and postponed adopting the MCL of 10 µg/l. After reviewing the arsenic information concerning health effects, analytical methods, and treatment, New Jersey proposed an MCL of 5 µg/l on January 20, 2004. The New Jersey MCL of 5 µg/l was adopted as part of the New Jersey Safe Drinking Water Act Regulations on November 4, 2004 and was published in the New Jersey Register on December 6, 2004.

The Federal compliance dates, monitoring schedules, compliance requirements, and accepted analytical methods for arsenic are adopted by reference. The MCL value is the only difference between the New Jersey and Federal Arsenic Rule, 5µg/l (State) being more stringent than 10µg/l (Federal).

All other rule changes included in this primacy package are adopted by reference as the New Jersey Primary Drinking water Regulations (N.J.A.C. 7:10-5.1).

Section IV. State Record Keeping and Reporting Checklist

There are no new State record-keeping or reporting requirements. New Jersey's are the same as the Federal requirements and there have been no changes.

Section V. Special Primacy Requirements (40 CFR 142.16) for the Arsenic Rule

(j) An application for approval of a State program revision which adopts the requirements specified in Secs. 141.11, 141.23, 141.24, 141.32, 141.40, 141.61 and 141.62 for an existing regulated contaminant must contain the following (in addition to the general primacy requirements enumerated elsewhere in this part, including the requirement that State regulations be at least as stringent as the federal requirements):

- (1) If a State chooses to issue waivers from the monitoring requirements in Secs. 141.23, 141.24, and 141.40, the State shall describe the procedures and criteria which it will use to review waiver applications and issue waiver determinations. The State shall provide the same information required in paragraph (e)(1)(i) and (ii) of this section. States may update their existing waiver criteria or use the requirements submitted under the National Primary Drinking Water Regulations for the inorganic and organic contaminants (i.e., Phase II/ V rule) in 16(e) of this section. States may simply note in their application any revisions to existing waiver criteria or note that the same procedures to issue waivers will be used.**

In the final amendments to the New Jersey Safe Drinking Water Act regulations (N.J.A.C. 7:10), adopted November 4, 2004, New Jersey adopted the Federal procedure for exceptions and waivers regarding arsenic.

- (2) A monitoring plan by which the State will ensure all systems complete the required monitoring by the regulatory deadlines. States may update their existing monitoring plan or use the same monitoring plan submitted under the National Primary Drinking Water Regulations for the inorganic and organic contaminants (i.e. Phase II/V rule) in 16(e) of this section. States may simply note in their application any revisions to an existing monitoring plan or note that the same monitoring plan will be used. The State must demonstrate that the monitoring plan is enforceable under State law.**

The SDWA regulations at 40 CFR 141 include monitoring requirements for all regulated parameters. Monitoring schedules for IOCs are determined based on the requirements of 40 CFR 141.23; public community and public nontransient noncommunity water systems are required to monitor at a frequency of quarterly, annually, or once every three years, at each point-of-entry to the water distribution system. The Federal standardized monitoring framework defines a compliance cycle of nine years, which is composed of three compliance periods, each three years long.

In accordance with 40 CFR 141.23, public community water systems primarily serving surface water, are required to sample their surface water points-of-entry annually; therefore, these systems were required to sample their surface water points-of-entry for arsenic in 2008, and are required to do so in 2009 and 2010 of the current three-year compliance period (2008 – 2010). Public community water systems primarily serving surface water will continue their required annual monitoring in subsequent compliance periods. Surface water systems were required to comply with the arsenic monitoring and MCL regulations, which became effective on January 23, 2006, by December 31, 2006. Surface water systems either grandfathered their 2005 result or collected an additional sample by December 31, 2006, the year the Arsenic Rule became effective.

Public community water systems serving groundwater monitor each point-of-entry once every three years in the year specified in the New Jersey regulations (N.J.A.C 7:10 – 5.2(a)7). The specific years of the three-year Federal compliance periods for IOCs were updated in 2004 in the New Jersey's Safe Drinking Water Act at N.J.A.C. 7:10-5.2(a)7 to cover the next three three-year compliance periods per the requirements established in 40 CFR 142.16 (e)(2) (i.e. 2005 – 2007, 2008 – 2010, 2011 – 2013). However, ground water points-of-entry that are part of a community water system which serves primarily surface water are required to be monitored as if serving surface water.

Community water systems using only ground water sources and serving a population greater than 10,000 people are required to sample for arsenic and other IOCs in the first year of the three-year compliance period; these systems were required to sample in 2008 as per N.J.A.C. 7:10-5.2(a)7. These water systems either grandfathered arsenic results collected between January 1, 2005 and January 23, 2006 or elected to take an additional sample by December 31, 2007 in order to comply with the Arsenic Rule when it took effect on January 23, 2006.

Community water systems using only ground water sources and serving a population less than or

equal to 10,000 are required to sample for arsenic and other IOCs in the second year of the three-year compliance period; these systems are required to sample in 2009, as per N.J.A.C. 7:10-5.2(a)7. In order to comply with the Arsenic Rule which took effect on January 23, 2006, this type of system could have sampled between January 1 and January 22, 2006 and the result would have been eligible to be grandfathered or the water system may have elected to take an additional sample by December 31, 2007.

Nontransient noncommunity water systems are required to monitor in the third year of the three-year compliance period; these systems are required to sample in 2010 for arsenic and other IOCs as per N.J.A.C. 7:10-5.2(a)7. Nontransient noncommunity water systems previously were required to sample for arsenic in 2007 and were required to comply with the new arsenic MCL of 5 µg/l at that time.

New Jersey permitted grandfathered data for ground water and surface water systems per the Federal Rule. Ground water systems that collected samples for the 2005-2007 compliance period between January 1, 2005 and January 23, 2006 using the approved analytical methodology may have grandfathered their data provided it was collected in the correct year based on system size, as per N.J.A.C. 7:10-5.2(a)7. Surface water systems that collected samples for the 2005-2007 compliance period between January 1, 2006 and January 23, 2006 using the approved analytical methodology may have grandfathered their data to satisfy their requirements for the 2006 year.

In accordance with 40 CFR 141.23, if monitoring samples show arsenic levels below the MCL at each entry point to the distribution system, ground water systems may continue to take routine samples once every three years at each sampling point and surface water systems may continue to sample at each sampling point annually.

In accordance with 40 CFR 141.23 (c), if a system that is monitoring annually, or less frequently, has a sample result exceeding the MCL, the system must conduct quarterly sampling beginning the next calendar quarter. The State may decrease the quarterly monitoring requirement to standard monitoring if a system is found to be Reliably and Consistently below the MCL. New Jersey defines a system as being Reliably and Consistently below the arsenic MCL if four consecutive quarterly sample results are below the MCL.

A system that has completed one year of quarterly sampling and the average of the four consecutive samples exceeds the MCL, is considered to be out of compliance with the MCL. If any single sample result would cause the annual average to exceed the MCL at any sampling point, the system is considered out of compliance with the MCL immediately.

If a system becomes out of compliance with the arsenic MCL, it must report it to the Bureau of Safe Drinking Water Implementation within forty-eight hours after becoming aware of the noncompliance, in accordance with 40 CFR 141.31.

In addition, the public water system is required to conduct Tier 2 Public Notification in accordance with 40 CFR 141.203(b) and provide a copy to the Bureau of Safe Drinking Water

Implementation. The public water system is also required to provide remediation as per N.J.A.C. 7:10-5.7 within one year from the receipt of the notice of noncompliance. Remediation may be one of the following: installation of treatment to remove excess arsenic, replacement of an existing well with a new well which meets all drinking water standards or the analytical results demonstrate that the current source of water no longer exceeds the MCL. If the system installs treatment, they will be required to continue quarterly monitoring.

Based on the requirements above, all public community and public nontransient noncommunity water systems have two years from the date of initial monitoring to come into compliance if a violation of the new MCL occurs. All water systems have to comply with the new arsenic MCL, which is 5 µg/l in New Jersey by the end of 2009.

(k) States establish the initial monitoring requirements for new systems and new sources. States must explain their initial monitoring schedules and how these monitoring schedules ensure that public water systems and sources comply with MCL's and monitoring requirements. States must also specify the time frame in which new systems will demonstrate compliance with the MCLs.

When a new community or noncommunity water system comes online or adds a new source, the system must monitor for arsenic no later than the end of the current three-year compliance period. The system then monitors according to the schedule during the next compliance cycle. For example, if a community water system serving 8,000 people comes online on January 1, 2010, that system has until the end of 2010 to monitor for arsenic using an approved analytical method, even though the monitoring for such systems was required during 2009 (compliance period = 2008 – 2010). Assuming there are no violations, the system would then monitor during the second year of the next compliance cycle (2012). If violations occur during routine monitoring, a system must monitor quarterly starting with the next quarter.

In addition, the Bureau of Safe Drinking Water Technical Assistance samples new sources of water for community water systems and those noncommunity water systems under the jurisdiction of federal or state agencies as part of the Bureau's sampling program. As part of the permitting and construction process, the Safe Drinking Water Act regulations (N.J.A.C. 7:10), require all community and noncommunity water systems to sample a new source of potable water for inorganics including arsenic, as part of their permit application. Prior to a system receiving approval to begin serving the public, the results must meet Federal and State Safe Drinking Water Standards. If an exceedance is found during the sampling, treatment must be installed prior to using the source.

Section VI. Attorney General's Statement of Enforceability

APPENDIX A

Arsenic Reporting Form

DWR-192 (11/2008)
BSDW-05

Department of Environmental Protection
Division of Water Supply – Bureau of Safe Drinking Water
401 East State Street
P.O. Box 426
Trenton, New Jersey 08625-0426
Tel # 609-292-5550 – Fax # 609-292-1654
DRINKING WATER ANALYSIS – INORGANIC

IN

System Name _____ PWS ID # _____
Address _____ Facility Name _____
City _____ Facility ID # _____
State _____ Zip _____ Laboratory ID# _____ Lab Name _____

Collection Date MMDDYY

--	--	--

Sample Type

--

Laboratory Sample # _____

SAMPLE TYPE

C – Confirmatory P – Plant Tap (Treated Water) Sample

Contaminant ID and Name	MCL mg/l	Analytical Result		Analytical Method	Analysis Date
		Sign (<)	(mg/L)		
1074 – Antimony	0.006				
1005 – Arsenic	0.005				
1010 – Barium	2				
1075 – Beryllium	0.004				
1015 – Cadmium	0.005				
1020 – Chromium	0.1				
1024 – Cyanide	0.2				
1025 – Fluoride	4.0				
1035 – Mercury	0.002				
1036 – Nickel	*				
1045 – Selenium	0.05				
1085 – Thallium	0.002				
	RUL mg/l				
1052 – Sodium	50				

☐

Check if MCL has been exceeded.

☐

Confirmatory Sample will follow.

RUL: Recommended Upper Limit

* No MCL monitoring and reporting required

Form prepared by: ____ Owner/Operator or ____ Laboratory Phone No. (____) _____

Print Name _____ Signature _____ Date _____

APPENDIX B

Subchapter 5: State Primary Drinking Water Regulations
New Jersey Safe Drinking Water Act N.J.A.C. 7:10

SUBCHAPTER 5. STATE PRIMARY DRINKING WATER REGULATIONS

7:10-5.1 Applicability of National Regulations

Except as provided in this subchapter, the Department adopts and incorporates herein by reference the National Primary Drinking Water Regulations, 40 CFR 141, as amended and supplemented, including all siting requirements, filtration and disinfection requirements, maximum contaminant levels, monitoring and analytical requirements, reporting requirements, public notification requirements, recordkeeping requirements, and the National Primary Drinking Water Regulations Implementation, 40 CFR 142 Subparts E, F, G and K, for variance and exemption requirements as the New Jersey primary drinking water regulations, applicable to all public water systems. All maximum contaminant levels and action levels in this subchapter shall apply to all public and nonpublic water systems, and shall be subject to monitoring requirements established by the appropriate administrative authority. Copies of the National Regulations may be obtained from either the Drinking Water Section of the Water Programs Branch, U.S. Environmental Protection Agency, 290 Broadway, New York, New York 10007-1861, (212) 637-3880; or the Bureau of Safe Drinking Water, Water Supply Administration, PO Box 426, Department of Environmental Protection, Trenton, New Jersey 08625-0426, (609) 292-5550.

Amended by R.2000 d.354, effective August 21, 2000.

See: 31 N.J.R. 2717(a), 32 N.J.R. 3106(a).

Rewrote the last sentence.

Amended by R.2004 d.442, effective December 6, 2004.

See: 36 N.J.R. 295(a), 36 N.J.R. 5383(b).

Rewrote the section.

Case Notes

Federal Regulations on primary drinking water adopted by the State; construction permit application denied due to anticipated nitrate production. Andover Mobile Home Park v. Department of Environmental Protection, 4 N.J.A.R. 420 (1981).

7:10-5.2 Discretionary changes to National Regulations

(a) In accordance with the discretionary authority permitted by the National Regulations, for compliance with the State primary drinking water regulations, the following shall apply:

1. Surface water treatment requirements shall be those established under the National Regulations except as provided in N.J.A.C. 7:10-9.

2. Microbiological monitoring shall be undertaken as required under the National Regulations, except:

i. The Department will not reduce the microbiological sampling frequency to less than one

sample per month for a public community water system serving 25 to 1000 persons.

ii. The Department will not reduce the microbiological sampling frequency to less than one sample per quarter for a public noncommunity water system (transient or nontransient) using only ground water source(s) and serving 25 to 1000 persons.

3. MCLs and monitoring requirements for inorganic chemicals (IOCs) shall be those established under the National Regulations and at (a)7 below, except for the State regulated contaminant arsenic, for which an MCL of five µg/l shall apply.

4. MCLs and monitoring requirements for volatile organic compounds (VOCs) shall be those established under the National Regulations and at (a)7 below except as listed in Table 1, below, for State-regulated VOCs.

TABLE 1
MCLs FOR STATE-REGULATED VOCs*

State-regulated VOC	MCL (in ug/l or ppb)
Benzene	1
Carbon tetrachloride	2
Chlorobenzene	50
1,3-Dichlorobenzene	600
1,2-Dichloroethane	2
1,1-Dichloroethylene	2
Methylene chloride	3
Tetrachloroethylene	1
Trichlorobenzene(s)	9
1,1,1-Trichloroethane	30
Trichloroethylene	1
Xylene(s)	1,000
1,1-Dichloroethane	50
1,1,2-Trichloroethane	3
1,1,2,2-Tetrachloroethane	1
Naphthalene	300
Methyl tertiary butyl ether (MTBE)	70

*The MCLs in this table are more stringent than those in the National Regulations, with the exception of the following chemicals, which do not have Federal MCLs: 1,3-dichlorobenzene; 1,1-dichloroethane; 1,1,2,2-tetrachloroethane; naphthalene; and methyl tertiary butyl ether.

i. As of January 1, 1997, monitoring requirements for all VOCs, including State-regulated contaminants, shall be those established under the National Regulations.

5. For public noncommunity water systems, monitoring requirements and MCLs for VOCs shall be those

established under the National Regulations, except that the MCLs for State-regulated contaminants shall be those listed in Table 1 at (a)4 above.

6. MCLs for synthetic organic compounds (SOCs) and pesticides shall be those established under the National Regulations except for the State-regulated contaminant chlordane, for which an MCL of 0.5 ug/l shall apply.

7. As required pursuant to 40 CFR 142.16, the monitoring period for each contaminant group, specifically, inorganics (except asbestos, nitrate and nitrite), volatile organic compounds, synthetic organic compounds, and radionuclides shall be as follows. Monitoring for radionuclides shall begin on January 1, 2005.

<u>Monitoring Period</u>	<u>Water System Type</u>
Year one of the three year Federal compliance period (that is, 2002, 2005, 2008, 2011)	All public community water systems (PCWS) using a surface water source(s) or all PCWS serving a population greater than 10,000.
Year two of the three year Federal compliance period (that is, 2003, 2006, 2009, 2012)	All public community water systems using a ground water source(s) serving a population equal to or less than 10,000.
Year three of the three year Federal compliance period (that is, 2004, 2007, 2010, 2013)	Public nontransient non-community water systems.

8. MCLs and monitoring requirements for disinfectants and disinfection by-products shall be those established under the National Regulations.

9. Action levels and monitoring requirements for lead and copper shall be those established under the National Regulations.

10. Subject to (a)10i below, MCLs and monitoring requirements for radionuclides shall be those established under the National Regulations.

i. Compliance with the MCL shall be individually determined at each sampling location including points of entry to the water distribution system, when individually directed by the Department, based on a running annual average of all quarterly sampling results from each of the sampling location.

11. The Department may allow monitoring waivers for public water systems pursuant to 40 CFR 141.23(c) and 141.24(f) and (h) of the National Regulations.

12. Subject to (a)12i below, suppliers of water from a bulk purchase system are subject only to the microbiological monitoring and lead and copper monitoring requirements of this section.

i. Effective January 1, 2004, a supplier of water from a bulk purchase system that regularly derives its water from another water system using a surface water source(s) and provides water to more than 100 service connections shall at a minimum collect a quarterly disinfection by-products sample from a point within the water distribution system with maximum residence time to be tested for Total Trihalomethanes (THM4) and Total Trihaloacetic Acids (HAA5) disinfection byproducts.

13. If a supplier of water installs a treatment device or process to bring the water into compliance with any applicable MCL, the supplier of water shall monitor for that contaminant each calendar quarter (notwithstanding compliance with the applicable MCL for the contaminant).

(b) The National Regulations, at 40 C.F.R. 141.151, require each community water system to annually develop and deliver to its customers a Consumer Confidence Report (CCR) which provides information on the quality of the water delivered by the system and characterizes the risks (if any) from exposure to contaminants detected in the drinking water in an accurate and understandable manner. In addition to the standards and requirements in the National Regulations for the development and distribution of the CCR, the following requirements shall apply:

1. Notwithstanding the provisions of the Federal Safe Drinking Water Act amendments of 1996, 42 U.S.C. §§ 300f et seq. and the National Regulations, at 40 C.F.R 141.155, every public community water system, regardless of the number of persons served, shall mail a copy of its Consumer Confidence Report to each of its customers.

2. The statement required pursuant to 40 C.F.R. 141.154(a) (Vulnerable Populations Statement) shall be included in bold print within the header of any chart displaying the levels of detection and maximum contaminant levels for contaminants included in the Consumer Confidence Report.

i. If the Consumer Confidence Report does not contain at least one chart displaying levels of detection and maximum contaminant levels, the

Vulnerable Population Statement shall be placed at the beginning of the report.

3. In addition to the reporting requirements set forth at N.J.A.C. 7:10-7.4, if, at any time during any monitoring period within the reporting year, a sample collected and analyzed pursuant to N.J.A.C. 7:10-7.3 exceeds the recommended upper limit for iron, manganese or sodium as provided at N.J.A. C. 7:10-7.2, the following language shall be included in the Consumer Confidence Report:

i. "FOR IRON: The recommended upper limit for iron is based on unpleasant taste of the water and staining of laundry. Iron is an essential nutrient, but some people who drink water with iron levels well above the recommended upper limit could develop deposits of iron in a number of organs of the body."

ii. "FOR MANGANESE: The recommended upper limit for manganese is based on staining of laundry. Manganese is an essential nutrient, and toxicity is not expected from high levels which would be encountered in drinking water."

iii. "FOR SODIUM: For healthy individuals, the sodium intake from water is not important, because a much greater intake of sodium takes place from salt in the diet. However, sodium levels above the recommended upper limit may be a concern to individuals on a sodium restricted diet."

4. In addition to the contaminants regulated by the National Regulations, for which the Department has either adopted by reference the Federal MCL or has adopted a lower MCL, there are five additional contaminants regulated by the Department, at N.J.A.C 7:10-5, but not regulated by the National Regulations. The Consumer Confidence Report shall include information concerning the five additional contaminants regulated in New Jersey as set forth below:

Contaminant	New Jersey MCL (ppb)	MCL in CCR units	Major Sources in Drinking Water	Health Effects Language
1,3-Dichlorobenzene*	600	600	Discharge from industrial chemical factories	Some people who drink water containing 1,3-Dichlorobenzene in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory system.
1,1-Dichloroethane	50	50	Discharge from metal degreasing sites and other factories	Some people who drink water containing 1,1-Dichloroethane in excess of the MCL over many years could experience problems with their kidneys.
Methyl tertiary butyl ether (MTBE)	70	70	Leaking underground gasoline and fuel oil tanks, gasoline and fuel oil spills	Some people who drink water containing MTBE in excess of the MCL over many years could experience problems with their kidneys.
Naphthalene	300	300	Discharge from industrial chemical factories, exposure to mothballs	Some people who drink water containing Naphthalene in an excess of the MCL over many years could experience problems with cataracts and hemolytic anemia.
1,1,2,2-Tetrachloroethane	1	1	Discharge from industrial chemical factories	Some people who drink water containing 1,1,2,2-Tetrachloroethane in excess of the MCL over many years could experience problems with their liver, kidneys, and central nervous system.

*The promulgated code lists this contaminant as “*meta*-Dichlorobenzene”; however, this version has been modified to reference the standardized name of the regulated chemical.

Amended by R.2000 d.354, effective August 21, 2000.

See: 31 N.J.R. 2717(a), 32 N.J.R. 3106(a).

In (a) rewrote 10 and 12.

Amended by R.2003 d.193, effective May 5, 2003.

See: 34 N.J.R. 428(a), 35 N.J.R. 1925(b).

Added (b).

Amended by R.2004, d.442, effective December 6, 2004.

See: 36 N.J.R. 295(a), 36 N.J.R. 5383(b).

In (a), rewrote 3, 4 and 7, added 13.

7:10-5.3 Analytical requirements

(a) The monitoring and analytical requirements for determining compliance with the maximum contaminant levels shall be those established under the National Regulations, except that the analysis for gross alpha particle activity shall be determined using the 48-

Hour Rapid Gross Alpha Test, in accordance with N.J.A.C. 7:18.

(b) Any analysis required under this chapter shall be conducted at a certified laboratory, certified in accordance with N.J.A.C. 7:18, for the specific analytical method used.

(c) Each analysis shall be conducted using a method capable of achieving an MDL below the MCL for the contaminant being analyzed.

(d) A supplier of water from a public community water system, when submitting any sample analysis to the Department, shall provide the following:

1. The test result for all contaminants tested for as part of the analytical method.

2. Any test result that exceeds a specified MDL; and

3. A description of the quality control procedures

followed applicable to the analysis submitted.

(e) The monitoring and analytical requirements for determining compliance with the maximum contaminant levels for the State-regulated VOCs listed in N.J.A.C. 7:10-5.2(a)4 shall be those established under the National Regulations at 40 CFR 141.24.

Amended by R.2004, d.442, effective December 6, 2004.

See: 36 N.J.R. 295(a), 36 N.J.R. 5383(b).

In (a), inserted “, except that the analysis for gross alpha particle activity shall be determined using the 48-Hour Rapid Gross Alpha Test, in accordance with N.J.A.C. 7:18” at the end; added (e).

7:10-5.4 Reporting requirements

(a) Except where a shorter reporting period is required by the National Regulations, each supplier of water shall submit a compliance sampling report to the Department within the first ten (10) calendar days of the month following the month in which any test, measurement or analysis is made. The compliance sampling report, containing the sampling results for microbiological contaminants, inorganic compounds, volatile organic compounds, synthetic organic compounds, radionuclides and lead and copper analyses, shall be prepared in a format prescribed by and on forms available from and submitted to, the Department at the following address:

Bureau of Safe Drinking Water
Water Supply Administration
New Jersey Department of Environmental
Protection
PO Box 426
Trenton, New Jersey 08625-0426

(b) Within 180 days after receipt of written notification from the Department, each supplier of water shall ensure that all compliance sampling reports and the monthly report required under (e) below are submitted to the Department electronically in a manner compatible with the Department's computer system.

(c) Each supplier of water from a public community water system shall report by telephone within 48 hours or on the next business day, whichever is sooner, to the Bureau of Safe Drinking Water at (609) 292-5550, the supplier's failure to comply with any primary drinking water regulation, including any failure to comply with any monitoring requirement pursuant to this subchapter. A supplier of water shall report any acute violation by

telephone to the Department as soon as the supplier becomes aware of such acute violation.

(d) A supplier of water is not required to submit a compliance sampling report to the Department if the Department conducts the sampling and if the State laboratory performs the sample analysis and reports the results directly to the Department.

(e) Each supplier of water from a public community water system shall submit a monthly report consisting of the daily records maintained pursuant to N.J.A.C. 7:10-5.6 by the 10th day of the month following the month for which the records contained in the report are compiled.

(f) If a supplier of water installs a treatment device or process to bring the water into compliance with any applicable MCL, the supplier of water shall report the results of the monitoring required under N.J.A.C. 7:10-5.2(a)13 to the Department on a quarterly basis. (A noncommunity water system supplier of water shall also submit a copy of the results to the administrative authority.)

Amended by R.2000 d.354, effective August 21, 2000.

See: 31 N.J.R. 2717(a), 32 N.J.R. 3106(a).

In (b), substituted “Within 180 days of receipt of written notification from the Department” for “Beginning on January 1, 1999” at the beginning. Amended by R.2004, d.442, effective December 6, 2004.

See: 36 N.J.R. 295(a), 36 N.J.R. 5383(b).

Rewrote (b); added (f).

7:10-5.5 Public notification

(a) Each supplier of water shall provide public notification of any violation of any MCL or monitoring requirement in accordance with the National Regulations pursuant to 40 CFR 141.32.

(b) Any supplier of water from a public noncommunity water system which the administrative authority determines is not in compliance with any primary drinking water regulation, including any monitoring requirement, shall immediately post a notice of such failure in a place conspicuous to consumers in a format prescribed in the National Regulations pursuant to 40 CFR 141.32. The notice shall remain posted until the administrative authority determines that the system is restored to compliance.

7:10-5.6 Recordkeeping

A supplier of water shall keep and maintain all records required under the National Regulations and also maintain daily records of water pumpage, quantities of chemicals used for water treatment and routine test results.

7:10-5.7 Remediation requirements and procedures

(a) Except as provided pursuant to (b) below, the supplier of water that analyzes and reports pursuant to this subchapter any violation of a promulgated MCL for any of the contaminants regulated pursuant to this subchapter shall, within one year after receipt of the results of the tests conducted pursuant to the National Regulations and N.J.A.C. 7:10-5.2 that demonstrate an exceedance that constitutes a violation, take any action necessary to bring the water into compliance with the applicable MCL.

(b) The Department may require by administrative order that the supplier of water take prompt action to bring the water into compliance with the applicable MCL upon a determination that such action is necessary to abate an immediate public health threat.

(c) The Department may extend the deadline by which the supplier of water must achieve compliance with the applicable MCL after a public hearing and its determination that the extension will not pose an imminent threat to public health, if new construction of a treatment plant is required.

(d) If the supplier of water fails to take action to bring the water into compliance with the applicable MCL pursuant to (a) above, the Department may take one or more of the following actions:

1. Seek to enjoin the supplier of water from continuing to supply water to the public;
2. Establish a program to bring the public water system into compliance;
3. Provide the customers of the public water system with an alternate potable water supply; and/or
4. Seek penalties in accordance with N.J.A.C. 7:10-3.

(e) If a supplier of water installs a treatment device

or process to bring the water into compliance with any applicable MCL, the supplier of water shall at all times maintain the device or process in good working order and operate the treatment device or process to ensure full compliance with the MCL. Failure to do so may result in penalties in accordance with N.J.A.C. 7:10-3.

Amended by R.2004, d.442, effective December 6, 2004.

See: 36 N.J.R. 295(a), 36 N.J.R. 5383(b).

In (a), deleted "newly" following "any violation of" and substituted "after" for "of" following "within one year"; added (e).